

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2492

PETITION OF SPRINT PCS/APC REALTY AND EQUIPMENT
COMPANY, LLC AND RAHIM TOFIGH
(Hearing held January 23, 2002)

OPINION OF THE BOARD
(Effective date of Opinion: March 28, 2002)

Case No. S-2492 is the petition of Sprint PCS/APC Realty and Equipment Company, LLC and Mr. Rahim Tofigh for a special exception pursuant to Section 59-G-2.43 of the Zoning Ordinance to permit the installation of a telecommunications facility consisting of nine panel antennas mounted on the penthouse wall on the rooftop of an existing 25-foot high office building and associated unmanned, self-contained accessory equipment cabinets in a first floor room in the interior of the building.

Pursuant to Section 59-A-4.11(a) of the Zoning Ordinance, the Board of Appeals ("Board") held a hearing at 10:30 a.m. on January 23, 2002 at which time evidence and testimony was submitted to the Board in support of, and in opposition to, the petition.

James R. Michal, Esquire and Janet A. Brown, Esquire appeared on behalf of the petitioner. Martin Klauber, Esquire, People's Counsel for Montgomery County, also appeared. Sam Hastings appeared and testified in opposition to this Petition.

The subject property is located at Parcel N684, Layhill Village Subdivision, located at 14301 Layhill Road, Silver Spring, Maryland, in the OM Zone.

Decision of the Board: Requested Special Exception **granted**,
subject to conditions enumerated below.

EVIDENCE PRESENTED TO THE BOARD

1. The Petitioner has applied for a special exception for the construction, operation, and maintenance of an unmanned telecommunications facility to be located on the rooftop and interior of the office building located at the subject

property of 14301 Layhill Road, Parcel N684, Aspen Hill, which property is zoned O-M (office building-moderate density).

2. Mr. Rahim Tofigh is the owner of the subject building. Sprint PCS/APC Realty and Equipment Company, LLC leases a portion of the rooftop and interior of the building for its proposed telecommunications facility. (Exhibit Nos. 8 - PCS Site Agreement, 25 - Letter to BOA from Rahim Tofigh, dated 12-20-01, re: request to become joint applicant).

3. The proposed facility will constitute a link in Sprint PCS' wireless communications network for coverage along Route 182 (Layhill Road)/Bel Pre Road/Bonifant Road and to the surrounding areas. (Exhibit Nos. 10 - Application for Wireless Communications Site Coordination, 11 - Memorandum from Robert Hunnicutt, dated 8-17-01, re: Tower Committee Recommendation, 17(a)(b) - Coverage maps with and without the proposed facility, 32 - Existing conditions of coverage area as of January 20, 2001, 33 - Coverage of area if approved).

4. The subject building is approximately twenty-five feet in height and has an eight foot, four inch high penthouse on the roof on which the Petitioner proposes to mount its nine panel antennas. Six of the antennas will be mounted with their bottom at the 30 feet elevation. (Exhibit Nos. 7 - (a) Rooftop plan, (b) Elevations, 30 - Photo simulation of attached antennas, 31 - Elevation (a) (b)). After further technical evaluation, the Petitioner determined that the three antennas in the sector to the northeast need to be raised an additional two feet, *i.e.*, the top of those antennas will stick up 3 ½ feet above the top of the penthouse wall, in order to provide an unobstructed transmission path beyond the roof of the building and to provide needed coverage to the east along Bonifant Road.

5. The Petitioner's antennas each measure approximately fifty-eight inches long, seven inches wide, and four inches deep, are white in color and will be painted to blend with the penthouse wall. (Exhibit Nos. 9 - Antenna specifications, 30 - Photo simulation of attached antennas). The antennas do not generate any noise, dust, fumes, odors, lights, glare, or vibrations, do not interfere with radio, television or telephone reception, and comply with all applicable emission requirements of the Federal Communications Commission (FCC) and Environmental Protection Agency. (Exhibit Nos. 3 - Petitioner's Statement of Operations, 12 - Statement from Sprint PCS, dated 9-27-01, 20 - Engineering statement).

6. The Petitioner will also place six related unmanned, self-contained accessory equipment cabinets in a first floor room inside the building. The cabinets each measure no more than approximately 6' high x 3' wide x 3' deep, are beige in color, and will not produce any noise, fumes, dust, odors, lights, glare or vibrations. (Exhibit Nos. 3 - Petitioner's Statement of Operations, 7(a) - Rooftop plan).

7. Mr. Michal stated that the proposed use of rooftop-mounted antennas is permitted by-right on buildings 30 feet or higher in the O-M zone. He added that while this building measures only 25 in height to the top of the roof parapet wall, the penthouse on which the Petitioner proposes to mount its antennas is an additional 8 feet, 4 inches in height, bringing the overall height to over 33 feet. Mr. Michal concluded that the penthouse structure is not counted in the overall building height calculation, and that but-for this, the proposed use would be permitted by-right and would not require a special exception.

8. The Tower Committee issued a favorable recommendation for this proposed facility on August 15, 2001. (Exhibit Nos. 10 - Application for Wireless Communications Site Coordination, 11 - Memorandum from Robert Hunnicutt, dated 8-17-01, re: Tower Committee Recommendation).

9. M-NCPPC Technical Staff recommended approval of this petition subject to the conditions adopted in the Technical Staff Report of January 17, 2002. (Exhibit No. 26 - M-NCPPC Staff Recommendation - Approval with conditions, dated 1-17-02, hereinafter "M-NCPPC Staff Recommendation").

10. The Planning Board recommended approval of this petition on January 17, 2002, subject to the same conditions recommended in the Technical Staff Report. (Exhibit No. 27 - Planning Board Report, dated January 17, 2002).

11. The proposed use is unmanned and will not generate any traffic other than occasional routine maintenance visits once or twice per month, which will generally be restricted to the building rooftop and interior. (Exhibit Nos. 3 - Petitioner's Statement of Operations, 5 - Petitioner's Statement of Justification).

12. The proposed use will not impose any burden on public or private water and sewage facilities, and requires only electricity and land line telephone service to operate. (Exhibit Nos. 3 - Petitioner's Statement of Operations, 5 - Petitioner's Statement of Justification).

13. The parcel on which the building is located is commercially zoned O-M and the subject property is an office building with existing mechanical equipment on the rooftop and grounds and multiple utility poles near the building. (Exhibit Nos. 15 - Photographs of subject property, 28 - Photographs of site from roof of building). The only impact of the facility is visual, which is an impact inherent in the use, and the antennas will be mounted and painted in such a way as to reduce their visibility and the equipment cabinets will be located in the interior of the building. (Exhibit Nos. 7(a) - Rooftop plan, 30 - Photo simulation of attached antennas, 31 - Elevation (a)(b)).

14. No signs or illumination will be used for the proposed facility. (Exhibit No. 5 - Petitioner's Statement of Justification).

15. The subject property is covered by the Aspen Hill Master Plan, which is silent in regard to telecommunications facilities and public utility structures specifically but addresses the need for adequate utilities. (Exhibit Nos. 5 - Petitioner's Statement of Justification, 21 - Excerpts from Aspen Hill Master Plan).

16. The Zoning Vicinity Map (Exhibit No. 22) and the M-NCPPC Technical Staff Report (Exhibit No. 26) reflect that the proposed use will not create a surplus of special exception uses in the area and will not alter any predominantly residential nature of neighboring areas. Further, the antennas will be mounted and painted in such a way as to reduce their visibility and the equipment cabinets will be located in the interior of the building. (Exhibit No. 30 - Photo simulation of attached antennas). Moreover, but-for the penthouse not being counted in the overall building height calculation, the proposed use of rooftop-mounted antennas would have been permitted by-right in this zone and would not require a special exception.

17. The proposed facility will meet all applicable setbacks and locational requirements. (Exhibit Nos. 6 - (a) Title sheet, (b) Survey, 7 - (a) Rooftop plan, (b) Elevations, 31 - Elevation (a)(b)).

18. There are several utility poles with wires in the vicinity, some of which are as high or higher than the subject building. These poles along with the existing mechanical equipment on the rooftop of the subject building are more noticeable than the proposed installation. (Exhibit Nos. 28 - Photographs of site from roof of building, 30 - Photo simulation of attached antennas).

FINDINGS OF THE BOARD

GENERAL CONDITIONS (SECTION 59-G-1.2.1)

The proposed special exception meets the general conditions set forth in Section 59-G-1.2.1 and 59-G-1.21, specifically:

Section 59-G-1.2.1 sets forth the standards which the Board must use to evaluate a special exception. That standard requires that a special exception be evaluated based on its inherent and non-inherent adverse effects at the particular location proposed, irrespective of adverse effect if elsewhere established in the zone (Zoning Text Amendment No. 99004, Opinion, page 4). Section 59-G-1.2.1 states:

Sec. 59-G-1.2. Conditions for Granting

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these

findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The Board interprets this section to require the following analysis. The Board must:

- (1) Make a determination as to the general neighborhood affected by the proposed use.
- (2) Establish those inherent, generic physical and operational characteristics arising from the given use, in this case any telecommunications facility, to create an evaluation standard. This evaluation standard does not include the actual physical size and scale of operation of the use proposed.
- (3) Determine separately the physical and operational characteristics of the particular use proposed, in this case the telecommunications facility as proposed by the Applicant.
- (4) Compare the generic characteristics of the evaluation standard with the particular characteristics of the use proposed. Inherent adverse effects are those characteristics of the proposed use consistent with the characteristics of the evaluation standard. Non-inherent adverse effects are those characteristics found in the use proposed that are not found in the evaluation standard.

Applying the above analysis to this case, the Board finds as follows:

(1) The General Neighborhood

The Board finds that the neighborhood affected by the proposed use consists of the properties located immediately north and east of the subject site which are zoned RT-15, and are developed with townhouse units. Also included are the properties across Bonifant Road and directly south of the site, which are

zoned C-T (Commercial Transitional) and R-60 and are developed with the Sandy Spring National Bank and low-density residential uses, respectively; the property across Layhill Road and west of the site, which is zoned C-1 and developed with the Layhill Shopping Center and the Plaza del Mercado; and the southwest quadrant of Layhill Road and Bonifant Road which is zoned PD-7 and developed as the Parker Farm townhouse community.

(2) Evaluation Standard - Physical and Operational Characteristics

The Board recognizes and adopts the Planning Board staff's recommendation in previous cases of seven criteria staff uses to establish the physical and operational characteristics of a use. Those are size, scale, scope, lighting, noise, traffic, and the environment. The Board finds that the primary physical characteristic necessarily associated with a telecommunications facility is such a facility's height ranging up to as much as 150 feet. These facilities tend to be visually obtrusive given the difficulty in mitigating the impact of the structure required to hold antennae required for operational use. The Board finds that there are minimal noise, traffic, and environmental issues relating to such facilities although they are accompanied by equipment buildings and related evergreen or other screening to mitigate the impact at ground level. There are generally no lighting impacts associated with this type of use.

(3) Proposed Use - Physical and Operational Characteristics

In this case, the height of the proposed use does not pose an issue as installation of a free standing monopole is not proposed, but rather the installation of antennas on a rooftop penthouse of an existing building. There will be minimal visual impact as the antennas will be mounted and painted so as to reduce their visibility. The equipment cabinets will be hidden from view in an interior room inside the existing building. There should be no environmental impact, no issues relating to noise, and no lighting is proposed. Any traffic will be occasional routine maintenance visits once or twice per month, and any activity will generally be restricted to the building rooftop and interior.

(4) Comparison of Characteristics

After considering the generic characteristics of a telecommunications facility, and comparing them with the proposed physical and operational characteristics of the applicant's use, the Board finds that all of the physical and operational characteristics of the proposed use will be inherent adverse effects.

59-G-1.21. General conditions.

- (a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

- (1) *Is a permissible special exception in the zone.*

Rooftop-mounted telecommunications antennas are permitted by-right in the O-M zone subject to Section 59-A-6.14 of the Zoning Ordinance, which requires a minimum building height of 30 feet in multi-family, commercial, or industrial zones. The subject building measures only 25 in height exclusive of the additional eight foot high penthouse structure on which the antennas will be located, making the proposed facility permissible by special exception. (Exhibit Nos. 7 - (a) Rooftop plan, (b) Elevations, 31 - Elevation (a)(b)).

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The proposed facility complies with all the standards and requirements set forth for a telecommunications facility under Section 59-G-2.43 of the Zoning Ordinance. In addition, the parcel on which the building is located is commercially zoned O-M and the subject property is an office building with existing mechanical equipment on the rooftop and grounds and multiple utility poles near the building. (Exhibit Nos. 15 - Photographs of subject property, 28 - Photographs of site from roof of building). The only impact of the facility is visual, which is an impact inherent in the use, the antennas will be mounted and painted in such a way as to reduce their visibility, and the equipment cabinets will be located in the interior of the building. (Exhibit Nos. 7(a) - Rooftop plan, 30 - Photo simulation of attached antennas, 31 - Elevation (a)(b)). There are several utility poles with wires in the vicinity, some of which are as high or higher than the subject building. These poles along with the existing mechanical equipment on the rooftop of the subject building are more noticeable than the proposed installation. (Exhibit Nos. 28 - Photographs of site from roof of building, 30 - Photo simulation of attached antennas).

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting a particular special exception at a particular*

location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The subject property part of the planning area covered by the Aspen Hill Master Plan. The Master Plan supports the existing O-M zone for the property and telecommunication facilities are allowed by special exception in that zone. (Exhibit Nos. 21 - Excerpts from Aspen Hill Master Plan, 26 - M-NCPPC Staff Recommendation).

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The proposed use will be in harmony with the general character of the neighborhood when considering these criteria. (Exhibit Nos. 5 - Petitioner's Statement of Justification, 26 - M-NCPPC Staff Recommendation, 28 - Photographs of site from roof of building, 30 - Photo simulation of attached antennas).

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed use will not have a detrimental effect for any of these reasons. (Exhibit Nos. 5 - Petitioner's Statement of Justification, 26 - M-NCPPC Staff Recommendation, 28 - Photographs of site from roof of building, 30 - Photo simulation of attached antennas).

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The requested use will not cause adverse effects with respect to any of these criteria. (Exhibit Nos. 3 - Petitioner's Statement of Operations, 12 - Statement from Sprint PCS, dated 9-27-01, 20 - Engineering statement, 26 - M-NCPPC Staff Recommendation).

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of

special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The Zoning Vicinity Map (Exhibit No. 22) and the M-NCPPC Technical Staff Report (Exhibit No. 26) reflect that the proposed use will not increase the number, intensity, and scope of the approved special exceptions in the area. (Exhibit Nos. 5 - Petitioner's Statement of Justification, 30 - Photo simulation of attached antennas).

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective on any adverse effects the use might have if established elsewhere in the zone.*

The proposed special exception will not cause any of these effects. (Exhibit Nos. 5 - Petitioner's Statement of Justification, 12 - Statement from Sprint PCS, dated 9-27-01, 20 - Engineering statement, 26 - M-NCPPC Staff Recommendation, 28 - Photographs of site from roof of building, 30 - Photo simulation of attached antennas).

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

The proposed facility will be served by adequate public services and facilities; it is unmanned and requires only electric and telephone landline service. (Exhibit Nos. 3 - Petitioner's Statement of Operations, 26 - M-NCPPC Staff Recommendation).

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

The site has been subdivided and, thus, a preliminary plan of subdivision is not needed. (Exhibit No. 26 - M-NCPPC Staff Recommendation).

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner or the District Council,*

as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

The proposed facility is unmanned, and with an average of two vehicular trips per month for equipment maintenance, there will be no detrimental effect on the safety of vehicular or pedestrian traffic. (Exhibit Nos. 3 - Petitioner's Statement of Operations, 26 - M-NCPPC Staff Recommendation).

SPECIFIC CONDITIONS (SEC. 59-G-2.43)

The proposed special exception meets the specific conditions set forth in Section 59-G-2.43, specifically:

Sec. 59-G-2.43. Public utility buildings, public utility structures, and telecommunication facilities.

(a) A public utility building or public utility structure, not otherwise permitted may be allowed by special exception. The findings of this subsection (a) do not apply to electric power transmission or distribution lines carrying in excess of 69,000 volts, which are regulated by subsection (f) below. For other buildings or structures regulated by this section, the Board must make the following findings:

(1) The proposed building or structure at the location selected is necessary for public convenience and service.

The proposed facility in this location is necessary for the public convenience and service as demonstrated by the Petitioner's coverage maps reflecting the unreliable state of existing Sprint PCS coverage in the area without the proposed facility and the improved coverage that the proposed facility will provide. (Exhibit Nos. 17(a)(b) - Coverage maps with and without the proposed facility, 32 - Existing conditions of coverage areas as of January 20, 2001, 33 - Coverage of areas if approved).

(2) The proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties.

The proposed facility will not substantially impair or prove detrimental to the neighboring properties nor will it endanger the health and safety of residents or workers in the community. (Exhibit Nos. 5 - Petitioner's Statement of Justification, 12 - Statement from Sprint PCS,

dated 9-27-01, 20 - Engineering statement, 26 - M-NCPPC Staff Recommendation, 28 - Photographs of site from roof of building, 30 - Photo simulation of attached antennas).

- (b) *Public utility buildings in any permitted residential zone, shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screen planting and fencing, wherever deemed necessary by the Board.*

Not applicable because the subject property is located in the O-M zone.

- (c) *Reserved.*

- (d) *Any proposed broadcasting tower shall have a setback of one foot from all property lines for every foot of height of the tower; provided, that any broadcasting tower lawfully existing on September 1, 1970, shall be exempt from the setback limitations imposed by this subsection, and may be continued, structurally altered, reconstructed or enlarged; provided further, that no structural change, repair, addition, alteration or reconstruction shall result in increasing the height of such tower above the then existing structurally designed height.*

Not applicable.

- (e) *Examples of public utility buildings and structures for which special exceptions are required under this section are buildings and structures for the occupancy, use, support or housing of switching equipment, regulators, stationary transformers and other such devices for supplying electric service; telephone offices; railroad, bus, trolley, air and boat passengers stations; radio or television transmitter towers and stations; telecommunication facilities; above ground pipelines. Additional standards for telecommunication facilities are found in subsection (j).*

The subject petition is a special exception use as defined in this subsection.

- (f) *The provisions of section 59-G-1.21(a) shall not apply to this subsection. In any residential zone, overhead electrical power and energy transmission and distribution lines carrying in excess of 69,000 volts.*

Not applicable.

- (g) *In addition to the authority granted by section 59-G-1.22, the Board may attach to any grant of a special exception under this section other conditions that it may deem necessary to protect the public health, safety or general welfare.*

This special exception approval is subject to the conditions adopted herein.

- (h) *Petitions for special exception under this section may be filed on project basis.*

Not applicable.

- (i) *A petitioner under this section shall be considered an interested person for purposes of filing a request for a special exception if he states in writing under oath that he has made a bona fide effort to obtain a contractual interest in the subject property for a valid consideration without success, and that he intends to continue negotiations to obtain the required interest or in the alternative to file condemnation proceedings should the special exception be granted.*

Not applicable.

- (j) *Any telecommunication facility must satisfy the following standards:*

- (1) *The minimum parcel or lot area must be sufficient to accommodate the location requirements for the support structure under paragraph (2), excluding the antenna(s), but not less than the lot area required in the zone. The location requirement is measured from the base of the support structure to the property line. The Board of Appeals may reduce the location requirement to not less the building setback of the applicable zone if the applicant requests a reduction and evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any and visibility from the street.*

The size of the subject parcel is 23,987 square feet. The Zoning Ordinance sets forth no minimum lot or parcel size for the O-M zone and the property owner is a co-petitioner; therefore, this special exception attaches to the entirety of the subject parcel which is sufficient to accommodate the location requirements for the proposed location of the

Petitioner's antennas on the rooftop, and the installation of its cabinets in an interior room of the existing building.

(2) *A support structure must be located as follows:*

- a. *In agricultural and residential zones, a distance of one foot from property line for every foot of height of the support structure.*

Not applicable.

- b. *In commercial and industrial zones, a distance of one-half foot from property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties.*

Not applicable as there is no new support structure proposed. The Petitioner will install its antennas on the rooftop of the existing building which continues to meet the setback standards for the O-M zone.

- c. *These location requirements apply to perimeter lot lines and not to interior lot lines.*

The location requirements for the proposed antennas apply to perimeter lot lines not interior lot lines.

(3) *A freestanding support structure must be constructed to hold not less than 3 telecommunication carriers. The Board may approve a support structure holding less than 3 telecommunication carriers if:*

- a. *requested by the applicant and a determination is made that collocation at the site is not essential to the public interest; and*
- b. *the board decides that construction of a lower support structure with fewer telecommunication carriers will promote community compatibility.*

Not applicable because no new freestanding structure is being proposed. The Petitioner will install its antennas on the rooftop of an existing office building.

- (4) *No signs or illumination are permitted in the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.*

No signs or illumination will be used for the proposed facility.
(Exhibit No. 5 - Petitioner's Statement of Justification).

- (5) *Every freestanding support structure must be removed at the cost of the applicant when the telecommunication facility is no longer in use by any telecommunication carrier.*

Removal of the Petitioner's telecommunications equipment when no longer in use is a condition of this approval.

CONDITIONS OF APPROVAL

The Board hereby grants the special exception for the proposed telecommunications facility, subject to the following conditions:

1. Petitioner shall be bound by all of its testimony and exhibits of record and the testimony of its witnesses, to the extent that such testimony and representations are identified in the Board's opinion granting the special exception.
2. The telecommunications facility must be removed at the cost of the applicant when the facility is no longer in use by the telecommunication carrier.
3. The applicant must obtain administrative approval by the Technical Staff of M-NCPPC of a site plan amendment prior to issuance of permits.

On motion by Louise L. Mayor seconded by Donna L. Barron, with Donald H. Spence, Jr., Angelo M. Caputo, and Allison Ishihara Fultz, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 28th day of March, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four month period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.